

REPORT

OF THE

INDEPENDENT

COMMISSION

ON THE

LOS ANGELES

POLICE

DEPARTMENT

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Summary of Report

The videotaped beating of Rodney G. King by three uniformed officers of the Los Angeles Police Department, in the presence of a sergeant and with a large group of other officers standing by, galvanized public demand for evaluation and reform of police procedures involving the use of force. In the wake of the incident and the resulting widespread outcry, the Independent Commission on the Los Angeles Police Department was created. The Commission sought to examine all aspects of the law enforcement structure in Los Angeles that might cause or contribute to the problem of excessive force. The Report is unanimous.

The King beating raised fundamental questions about the LAPD, including:

- the apparent failure to control or discipline officers with repeated complaints of excessive force
- concerns about the LAPD's "culture" and officers' attitudes toward racial and other minorities

- the difficulties the public encounters in attempting to make complaints against LAPD officers
- the role of the LAPD leadership and civilian oversight authorities in addressing or contributing to these problems

These and related questions and concerns form the basis for the Commission's work.

LOS ANGELES AND ITS POLICE FORCE

The LAPD is headed by Police Chief Daryl Gates with an executive staff currently consisting of two assistant chiefs, five deputy chiefs, and 17 commanders. The City Charter provides that the Department is ultimately under the control and oversight of the five-member civilian Board of Police Commissioners. The Office of Operations, headed by Assistant Chief Robert Vernon, accounts for approximately 84% of the Department's personnel, including most patrol officers and detectives. The Office of Operations has 18 separate geographic areas within the City, divided among four bureaus (Central, South, West, and Valley). There are currently about 8,450 sworn police officers, augmented by more than 2,000 civilian LAPD employees.

While the overall rate of violent crime in the United States increased three and one-half times between 1960 and 1989, the rate in Los Angeles during the same period was more than twice the national average. According to 1986 data recently published by the Police Foundation, the Los Angeles police were the busiest among the officers in the nation's largest six cities. As crime rates soar, police officers must contend with more and more potential and actual violence each day. One moment officers must confront a life-threatening situation; the next they must deal with citizen problems requiring understanding and kindness. The difficulties of policing in Los Angeles are compounded by its vast geographic area and the ethnic diversity of its population. The 1990 census data reflect how enormous that diversity is: Latinos constitute 40% of the total population; Whites 37%; African-Americans 13%; and Asian/Pacific Islanders and others 10%. Of the police departments of the six largest United States cities, the LAPD has the fewest officers per resident and the fewest officers per square mile. Yet the LAPD boasts more arrests per officer than

other forces. Moreover, by all accounts, the LAPD is generally efficient, sophisticated, and free of corruption.

THE PROBLEM OF EXCESSIVE FORCE

LAPD officers exercising physical force must comply with the Department's Use of Force Policy and Guidelines, as well as California law. Both the LAPD Policy and the Penal Code require that force be reasonable; the Policy also requires that force be necessary. An officer may resort to force only where he or she faces a credible threat, and then may use only the minimum amount necessary to control the suspect.

The Commission has found that there is a significant number of LAPD officers who repetitively misuse force and persistently ignore the written policies and guidelines of the Department regarding force. The evidence obtained by the Commission shows that this group has received inadequate supervisory and management attention.

Former Assistant Chief Jesse Brewer testified that this lack of management attention and accountability is the "essence of the excessive force problem We know who the bad guys are. Reputations become well known, especially to the sergeants and then of course to lieutenants and the captains in the areas But I don't see anyone bring these people up" Assistant Chief David Dotson testified that "we have failed miserably" to hold supervisors accountable for excessive force by officers under their command. Interviews with a large number of present and former LAPD officers yield similar conclusions. Senior and rank-and-file officers generally stated that a significant number of officers tended to use force excessively, that these problem officers were well known in their divisions, that the Department's efforts to control or discipline those officers were inadequate, and that their supervisors were not held accountable for excessive use of force by officers in their command.

The Commission's extensive computerized analysis of the data provided by the Department (personnel complaints, use of force reports, and reports of officer-involved shootings) shows that a significant group of problem officers poses a much higher risk of excessive force than other officers:

- Of approximately 1,800 officers against whom an allegation of excessive force or improper tactics was made from 1986 to 1990, more than 1,400 had only one or two allegations.

But 183 officers had four or more allegations, 44 had six or more, 16 had eight or more, and one had 16 such allegations.

- Of nearly 6,000 officers identified as involved in use of force reports from January 1987 to March 1991, more than 4,000 had fewer than five reports each. But 63 officers had 20 or more reports each. The top 5% of the officers (ranked by number of reports) accounted for more than 20% of all reports

Blending the data disclosed even more troubling patterns. For example, in the years covered, one officer had 13 allegations of excessive force and improper tactics, 5 other complaint allegations, 28 use of force reports, and 1 shooting. Another had 6 excessive force/improper tactics allegations, 19 other complaint allegations, 10 use of force reports, and 3 shootings. A third officer had 7 excessive force/improper tactic allegations, 7 other complaint allegations, 27 use of force reports, and 1 shooting.

A review of personnel files of the 44 officers identified from the LAPD database who had six or more allegations of excessive force or improper tactics for the period 1986 through 1990 disclosed that the picture conveyed was often incomplete and at odds with contemporaneous comments appearing in complaint files. As a general matter, the performance evaluation reports for those problem officers were very positive, documenting every complimentary comment received and expressing optimism about the officer's progress in the Department. The performance evaluations generally did not give an accurate picture of the officers' disciplinary history, failing to record "sustained" complaints or to discuss their significance, and failing to assess the officer's judgment and contacts with the public in light of disturbing patterns of complaints.

The existence of a significant number of officers with an unacceptable and improper attitude regarding the use of force is supported by the Commission's extensive review of computer messages sent to and from patrol cars throughout the City over the units' Mobile Digital Terminals ("MDTs"). The Commission's staff examined 182 days of MDT transmissions selected from the period from November 1989 to March 1991. Although the vast majority of messages reviewed consisted of routine police communications, there were hundreds of improper messages, including scores in which officers talked

about beating suspects: "Capture him, beat him and treat him like dirt" Officers also used the communications system to express their eagerness to be involved in shooting incidents. The transmissions also make clear that some officers enjoy the excitement of a pursuit and view it as an opportunity for violence against a fleeing suspect.

The patrol car transmissions can be monitored by a field supervisor and are stored in a database where they could be (but were not) audited. That many officers would feel free to type messages about force under such circumstances suggests a serious problem with respect to excessive force. That supervisors made no effort to monitor or control those messages evidences a significant breakdown in the Department's management responsibility.

The Commission also reviewed the LAPD's investigation and discipline of the officers involved in all 83 civil lawsuits alleging excessive or improper force by LAPD officers for the period 1986 through 1990 that resulted in a settlement or judgment of more than \$15,000. A majority of cases involved clear and often egregious officer misconduct resulting in serious injury or death to the victim. The LAPD's investigation of these 83 cases was deficient in many respects, and discipline against the officers involved was frequently light and often nonexistent.

While the precise size and identity of the problem group of officers cannot be specified without significant further investigation, its existence must be recognized and addressed. The LAPD has a number of tools to promote and enforce its policy that only reasonable and necessary force be used by officers. There are rewards and incentives such as promotions and pay upgrades. The discipline system exists to impose sanctions for misconduct. Officers can be reassigned. Supervisors can monitor and counsel officers under their command. Officers can be trained at the Police Academy and, more importantly, in the field, in the proper use of force.

The Commission believes that the Department has not made sufficient efforts to use those tools effectively to address the significant number of officers who appear to be using force excessively and improperly. The leadership of the LAPD must send a much clearer and more effective message that excessive force will not be tolerated and that officers and their supervisors will be

evaluated to an important extent by how well they abide by and advance the Department's policy regarding use of force.

RACISM AND BIAS

The problem of excessive force is aggravated by racism and bias within the LAPD. That nexus is sharply illustrated by the results of a survey recently taken by the LAPD of the attitudes of its sworn officers. The survey of 960 officers found that approximately one-quarter (24.5%) of 650 officers responding agreed that "racial bias (prejudice) on the part of officers toward minority citizens currently exists and contributes to a negative interaction between police and community." More than one-quarter (27.6%) agreed that "an officer's prejudice towards the suspect's race may lead to the use of excessive force."

The Commission's review of MDT transmissions revealed an appreciable number of disturbing and recurrent racial remarks. Some of the remarks describe minorities through animal analogies ("sounds like monkey slapping time"). Often made in the context of discussing pursuits or beating suspects, the offensive remarks cover the spectrum of racial and ethnic minorities in the City ("I would love to drive down Slauson with a flame thrower . . . we would have a barbecue"; "I almost got me a Mexican last night but he dropped the dam gun to quick, lots of wit"). The officers typing the MDT messages apparently had little concern that they would be disciplined for making such remarks. Supervisors failed to monitor the messages or to impose discipline for improper remarks and were themselves frequently the source of offensive comments when in the field.

These attitudes of prejudice and intolerance are translated into unacceptable behavior in the field. Testimony from a variety of witnesses depict the LAPD as an organization with practices and procedures that are conducive to discriminatory treatment and officer misconduct directed to members of minority groups. Witnesses repeatedly told of LAPD officers verbally harassing minorities, detaining African-American and Latino men who fit certain generalized descriptions of suspects, employing unnecessarily invasive or humiliating tactics in minority neighborhoods and using excessive force. While the Commission does not purport to adjudicate the validity of any

one of these numerous complaints, the intensity and frequency of them reveal a serious problem.

Bias within the LAPD is not confined to officers' treatment of the public, but is also reflected in conduct directed to fellow officers who are members of racial or ethnic minority groups. The MDT messages and other evidence suggest that minority officers are still too frequently subjected to racist slurs and comments and to discriminatory treatment within the Department. While the relative number of officers who openly make racially derogatory comments or treat minority officers in a demeaning manner is small, their attitudes and behavior have a large impact because of the failure of supervisors to enforce vigorously and consistently the Department's policies against racism. That failure conveys to minority and non-minority officers alike the message that such conduct is in practice condoned by the Department.

The LAPD has made substantial progress in hiring minorities and women since the 1981 consent decree settling discrimination lawsuits against the Department. That effort should continue, including efforts to recruit Asians and other minorities who are not covered by the consent decree. The Department's statistics show, however, that the vast majority of minority officers are concentrated in the entry level police officer ranks in the Department. More than 80% of African-American, Latino and Asian officers hold the rank of Police Officer I-III. Many minority officers cite white dominance of managerial positions within the LAPD as one reason for the Department's continued tolerance of racially motivated language and behavior.

Bias within the LAPD is not limited to racist and ethnic prejudices but includes strongly felt bias based on gender and sexual orientation. Current LAPD policy prohibits all discrimination, including that based on sexual orientation. A tension remains, however, between the LAPD's official policy and actual practice. The Commission believes that the LAPD must act to implement fully its formal policy of nondiscrimination in the recruitment and promotion of gay and lesbian officers.

A 1987 LAPD study concluded that female officers were subjected to a double standard and subtle harassment and were not accepted as part of the working culture. As revealed in interviews of many of the officers charged with training new recruits, the problem has not abated in the last four years.

Although female LAPD officers are in fact performing effectively, they are having a difficult time being accepted on a full and equal basis.

The Commission heard substantial evidence that female officers utilize a style of policing that minimizes the use of excessive force. Data examined by the Commission indicate that LAPD female officers are involved in use of excessive force at rates substantially below those of male officers. Those statistics, as confirmed by both academic studies and anecdotal evidence, also indicate that women officers perform at least as well as their male counterparts when measured by traditional standards.

The Commission believes that the Chief of Police must seek tangible ways, for example, through the use of the discipline system, to establish the principle that racism and bias based on ethnicity, gender, or sexual orientation will not be tolerated within the Department. Racism and bias cannot be eliminated without active leadership from the top. Minority and female officers must be given full and equal opportunity to assume leadership positions in the LAPD. They must be assigned on a fully nondiscriminatory basis to the more desirable, "coveted" positions and promoted on the same nondiscriminatory basis to supervisory and managerial positions.

COMMUNITY POLICING

The LAPD has an organizational culture that emphasizes crime control over crime prevention and that isolates the police from the communities and the people they serve. With the full support of many, the LAPD insists on aggressive detection of major crimes and a rapid, seven-minute response time to calls for service. Patrol officers are evaluated by statistical measures (for example, the number of calls handled and arrests made) and are rewarded for being "hardnosed." This style of policing produces results, but it does so at the risk of creating a siege mentality that alienates the officer from the community.

Witness after witness testified to unnecessarily aggressive confrontations between LAPD officers and citizens, particularly members of minority communities. From the statements of these citizens, as well as many present and former senior LAPD officers, it is apparent that too many LAPD patrol officers view citizens with resentment and hostility; too many treat the public with rudeness and disrespect. LAPD officers themselves seem to recognize the extent of the problem: nearly two-thirds (62.9%) of the 650 officers who

responded to the recent LAPD survey expressed the opinion that "increased interaction with the community would improve the Department's relations with citizens."

A model of community policing has gained increased acceptance in other parts of the country during the past 10 years. The community policing model places service to the public and prevention of crime as the primary role of police in society and emphasizes problem solving, with active citizen involvement in defining those matters that are important to the community, rather than arrest statistics. Officers at the patrol level are required to spend less time in their cars communicating with other officers and more time on the street communicating with citizens. Proponents of this style of policing insist that addressing the causes of crime makes police officers more effective crime-fighters, and at the same time enhances the quality of life in the neighborhood.

The LAPD made early efforts to incorporate community policing principles and has continued to experiment with those concepts. For example, the LAPD's nationally recognized DARE program has been viewed by officers and the public alike as a major achievement. The LAPD remains committed, however, to its traditional style of law enforcement with an emphasis on crime control and arrests. LAPD officers are encouraged to command and to confront, not to communicate. Community policing concepts, if successfully implemented, offer the prospect of effective crime prevention and substantially improved community relations. Although community-based policing is not a panacea for the problem of crime in society, the LAPD should carefully implement this model on a City-wide basis. This will require a fundamental change in values. The Department must recognize the merits of community involvement in matters that affect local neighborhoods, develop programs to gain an adequate understanding of what is important to particular communities, and learn to manage departmental affairs in ways that are consistent with the community views expressed. Above all, the Department must understand that it is accountable to all segments of the community.

RECRUITMENT

Although 40% of the candidates for admission to the Police Academy are disqualified as a result of psychological testing and background investigation, the Commission's review indicated that the initial psychological evaluation is an

ineffective predictor of an applicant's tendencies toward violent behavior and that the background investigation pays too little attention to a candidate's history of violence. Experts agree that the best predictor of future behavior is previous behavior. Thus, the background investigation offers the best hope of screening out violence-prone applicants. Unfortunately, the background investigators are overworked and inadequately trained.

Improved screening of applicants is not enough. Police work modifies behavior. Many emotional and psychological problems may develop during an officer's tenure on the force. Officers may enter the force well suited psychologically for the job, but may suffer from burnout, alcohol-related problems, cynicism, or disenchantment, all of which can result in poor control over their behavior. A person's susceptibility to the behavior-modifying experiences of police work may not be revealed during even the most skilled and sophisticated psychological evaluation process. Accordingly, officers should be retested periodically to determine both psychological and physical problems. In addition, supervisors must understand their role to include training and counseling officers to cope with the problems policing can often entail, so that they may be dealt with before an officer loses control or requires disciplinary action.

TRAINING

LAPD officer training has three phases. Each recruit spends approximately six months at the Police Academy. The new officer then spends one year on probation working with more experienced patrol officers who serve as field training officers ("FTOs"). Thereafter, all officers receive continuing training, which includes mandatory field training and daily training at roll call. The Commission believes that in each phase of the training additional emphasis is needed on the use of verbal skills rather than physical force to control potentially volatile situations and on the development of human relationship skills.

The quality of instruction at the Police Academy is generally impressive. However, at present the curriculum provides only eight hours in cultural awareness training. No more than 1-1/2 hours is devoted to any ethnic group. Substantially more training on this important topic is essential. In addition, the Academy's current Spanish language program needs to be reviewed and

current deficiencies corrected. Officers with an interest in developing broader language skills should be encouraged to do so.

Upon graduation the new officer works as a "probationary officer" assigned to various field training officers. The FTOs guide new officers' first contacts with citizens and have primary responsibility for introducing the probationers to the culture and traditions of the Department. The Commission's interviews of FTOs in four representative divisions revealed that many FTOs openly perpetuate the siege mentality that alienates patrol officers from the community and pass on to their trainees confrontational attitudes of hostility and disrespect for the public. This problem is in part the result of flaws in the way FTOs are selected and trained. The hiring of a very large number of new officers in 1989, which required the use of less experienced FTOs, greatly exacerbated the problem.

Any officer promoted to Police Officer III by passing a written examination covering Department policies and procedures is eligible to serve as an FTO. At present there are no formal eligibility or disqualification criteria for the FTO position based on an applicants' disciplinary records. Fourteen of the FTOs in the four divisions the Commission studied had been promoted to FTO despite having been disciplined for use of excessive force or use of improper tactics. There also appears to be little emphasis on selecting FTOs who have an interest in training junior officers, and an FTO's training ability is given little weight in his or her evaluation.

The most influential training received by a probationer comes from the example set by his or her FTO. Virtually all of the FTOs interviewed stated that their primary objective in training probationers is to instill good "officer safety skills." While the Commission recognizes the importance of such skills in police work, the probationers' world is quickly divided into "we/they" categories, which is exacerbated by the failure to integrate any cultural awareness or sensitivity training into field training.

The Commission believes that, to become FTOs, officers should be required to pass written and oral tests designed to measure communications skills, teaching aptitude, and knowledge of Departmental policies regarding appropriate use of force, cultural sensitivity, community relations, and nondiscrimination. Officers with an aptitude for and interest in training junior officers should be encouraged by effective incentives to apply for FTO positions. In addition, the training program for FTOs should be modified to

place greater emphasis on communication skills and the appropriate use of force. Successful completion of FTO School should be required before an FTO begins teaching probationers.

PROMOTION, ASSIGNMENT, AND OTHER PERSONNEL ISSUES

In the civil service process for promotion of officers in the LAPD, the information considered includes performance evaluations, educational and training background, and all sustained complaints. The number and nature of any not sustained complaints, however, are not considered. The Commission recommends that a summary of not sustained complaints be considered in promotion decisions, as well as in paygrade advancements and assignments to desirable positions that are discretionary within the LAPD and outside the civil service system.

This is not to say that a past complaint history, even including a sustained complaint for excessive force, should automatically bar an officer from promotion. But there should be a careful consideration of the officer's complaint history including a summary of not sustained complaints, and particularly multiple complaints with similar fact patterns.

Complaint histories should also be considered in assignment of problem officers who may be using force improperly. For example, a problem officer can be paired with an officer with excellent communications skills that may lessen the need for use of force, as opposed to a partner involved in prior incidents of force with that problem officer. Another example is assignments to the jail facilities where potential for abuse by officers with a propensity to use excessive force is high. As several incidents examined by the Commission made clear, transfer of an officer to another geographical area is not likely to address a problem of excessive force without other remedial measures such as increased supervising, training and counseling.

Since 1980 the Department has permitted police officers working in patrol to select the geographic area or division for their patrol assignment subsequent to their initial assignment after completion of probation. As a result, sergeants and patrol officers tend to remain in one division for extended periods. The Commission believes that assignment procedures should be modified to require rotation through various divisions to ensure that officers work in a wide range of police functions and varied patrol locations during their careers. Such

a rotation program will increase officers' experience and also will enable the Department to deploy police patrols with greater diversity throughout the City.

Under the current promotion system officers generally must leave patrol to advance within the Department. Notwithstanding the importance of the patrol function, therefore, the better officers are encouraged to abandon patrol. To give patrol increased emphasis and to retain good, experienced officers, the LAPD should increase rewards and incentives for patrol officers.

PERSONNEL COMPLAINTS AND OFFICER DISCIPLINE

No area of police operations received more adverse comment during the Commission's public hearings than the Department's handling of complaints against LAPD officers, particularly allegations involving the use of excessive force. Statistics make the public's frustration understandable. Of the 2,152 citizen allegations of excessive force from 1986 through 1990, only 42 were sustained.

All personnel complaints are reviewed by a captain in the LAPD's Internal Affairs Division ("IAD") to determine whether the complaint will be investigated by IAD or the charged officer's division. Generally IAD investigates only a few cases because of limited resources. Wherever investigated, the matter is initially adjudicated by the charged officer's division commanding officer, with a review by the area and bureau commanders.

The Commission has found that the complaint system is skewed against complainants. People who wish to file complaints face significant hurdles. Some intake officers actively discourage filing by being uncooperative or requiring long waits before completing a complaint form. In many heavily Latino divisions, there is often no Spanish speaking officer available to take complaints.

Division investigations are frequently inadequate. Based on a review of more than 700 complaint investigation files, the Commission found many deficiencies. For example, in a number of complaint files the Commission reviewed, there was no indication that the investigators had attempted to identify or locate independent witnesses or, if identified, to interview them. IAD investigations, on the whole, were of a higher quality than the division investigations. Although the LAPD has a special "officer involved shooting team," the Commission also found serious flaws in the investigation of shooting

cases. Officers are frequently interviewed as a group, and statements are often not recorded until the completion of a "pre-interview."

The process of complaint adjudication is also flawed. First, there is no uniform basis for categorizing witnesses as "independent" or "non-involved" as opposed to "involved," although that distinction can determine whether a complaint is "not sustained" or "sustained." Some commanding officers also evaluate witnesses' credibility in inconsistent and biased ways that improperly favor the officer. Moreover, even when excessive force complaints are sustained, the punishment is more lenient than it should be. As explained by one deputy chief, there is greater punishment for conduct that embarrasses the Department (such as theft or drug use) than for conduct that reflects improper treatment of citizens. Statistical data also support the inference that the Department treats excessive force violations more leniently than it treats other types of officer misconduct.

Perhaps the greatest single barrier to the effective investigation and adjudication of complaints is the officers' unwritten code of silence: an officer does not provide adverse information against a fellow officer. While loyalty and support are necessary qualities, they cannot justify the violation of an officer's public responsibilities to ensure compliance with the law, including LAPD regulations.

A major overhaul of the disciplinary system is necessary to correct these problems. The Commission recommends creation of the Office of the Inspector General within the Police Commission with responsibility to oversee the disciplinary process and to participate in the adjudication and punishment of the most serious cases. The Police Commission should be responsible for overseeing the complaint intake process. Citizens must believe they can lodge complaints that will be investigated and determined fairly. All complaints relating to excessive force (including improper tactics) should be investigated by IAD, rather than at the involved officer's division, and should be subject to periodic audits by the Inspector General. While the Chief of Police should remain the one primarily responsible for imposing discipline in individual cases, the Police Commission should set guidelines as a matter of policy and hold the Chief accountable for following them.

STRUCTURAL ISSUES

Although the City Charter assigns the Police Commission ultimate control over Department policies, its authority over the Department and the Chief of Police is illusory. Structural and operational constraints greatly weaken the Police Commission's power to hold the Chief accountable and therefore its ability to perform its management responsibilities, including effective oversight. Real power and authority reside in the Chief.

The Chief of Police is the general manager and chief administrative officer of the Police Department. The Police Commission selects the Chief from among top competitors in a civil service examination administered by the Personnel Department. Candidates from outside the Department are disadvantaged by City Charter provisions and seniority rules.

The Chief's civil service status largely protects him or her from disciplinary action or discharge by giving him a "substantial property right" in his job and declaring that he cannot be suspended or removed except for "good and sufficient cause" based upon an act or omission occurring within the prior year. In addition, recently enacted Charter Amendment 5 empowers the City Council to review and override the actions of the City's commissions, including the Police Commission.

The Police Commission's staff is headed by the Commanding Officer, Commission Operations, a sworn LAPD officer chosen by the Police Commissioners, who normally serves in that post for two to three years. Because the Police Commission depends heavily on the Commanding Officer to review information received from the Department and to identify issues, it must also rely on his willingness to criticize his superior officers. However, he lacks the requisite independence because his future transfer and promotion are at the discretion of the Chief of Police, and he is part of the Chief's command structure as well as being answerable to the Police Commission.

The Police Commission receives summaries, prepared by the Department, of disciplinary actions against sworn officers, but cannot itself impose discipline. The summaries are brief and often late, making it impossible for the Police Commission to monitor systematically the discipline imposed by the Chief in use of force and other cases.

The Commission believes that the Department should continue to be under the general oversight and control of a five-member, part-time citizen Police

Commission. Commissioners' compensation should be increased substantially. They should serve a maximum of five years with staggered terms. The Police Commission's independent staff should be increased by adding civilian employees, including management auditors, computer systems data analysts, and investigators with law enforcement experience. It is vital that the Police Commission's staff be placed under the control of an independent civilian Chief of Staff, a general manager level employee.

The Chief of Police must be more responsive to the Police Commission and the City's elected leadership, but also must be protected against improper political influences. To achieve this balance, the Chief should serve a five-year term, renewable at the discretion of the Police Commission for one additional five-year term. The selection, tenure, discipline, and removal of the Chief should be exempted from existing civil service provisions. The Chief should be appointed by the Mayor, with advice from the Police Commission and the consent of the City Council after an open competition. The Police Commission should have the authority to terminate the Chief prior to the expiration of the first or second five-year term, but the final decision to terminate should require the concurrence of the Mayor and be subject to a reversal by vote of two-thirds of the City Council.

IMPLEMENTATION

Full implementation of this Report will require action by the Mayor, the City Council, the Police Commission, the Police Department, and ultimately the voters. To monitor the progress of reform, the City Council should require reports on implementation at six month intervals from the Mayor, the Council's own Human Resources and Labor Relations Committee, the Police Commission, and the Police Department. The Commission should reconvene in six months to assess the implementation of its recommendations and to report to the public.

Chief Gates has served the LAPD and the City 42 years, the past 13 years as Chief of Police. He has achieved a noteworthy record of public service in a stressful and demanding profession. For the reasons set forth in support of the recommendation that the Chief of Police be limited to two five-year terms, the Commission believes that commencement of a transition in that office is now appropriate. The Commission also believes that the interests of harmony and

healing would be served if the Police Commission is now reconstituted with members not identified with the recent controversy involving the Chief.

More than any other factor, the attitude and actions of the leaders of the Police Department and other City agencies will determine whether the recommendations of this Report are adopted. To make genuine progress on issues relating to excessive force, racism and bias, leadership must avoid sending mixed signals. We urge those leaders to give priority to stopping the use of excessive force and curbing racism and bias and thereby to bring the LAPD to a new level of excellence and esteem throughout Los Angeles.

Chapter Nine:

Complaints and Discipline

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"[W]hen an officer finally gets fed up and comes forward to speak the truth, that will mark the end of his or her police career. The police profession will not tolerate it, and civilian authorities will close their eyes when the retaliatory machinery comes down on the officer."

Former LAPD Officer Brenda
Grinston, *Los Angeles Times*,
July 2, 1991

Chapter Nine: Complaints and Discipline

No area of police operations received more adverse comment during the Commission's public hearings than the Department's handling of citizen complaints against LAPD officers, particularly allegations involving excessive use of force. Many community groups and members of the general public firmly believe that the Department is incapable of disciplining its own officers.

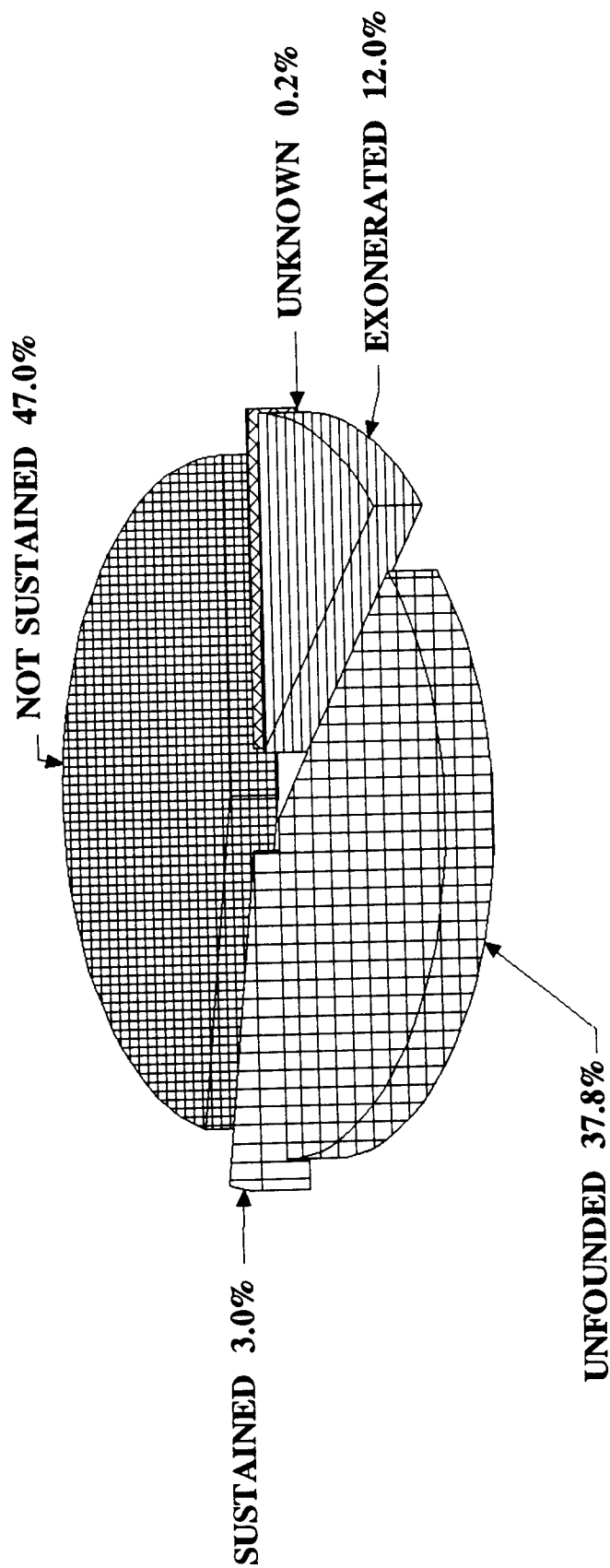
Statistics make the public's frustration understandable. As the following table shows (Table 9-1), of the 3,419 allegations of excessive force or improper tactics initiated by members of the public from 1986 through 1990, only 103 (3.0%) were sustained. Of the 2,152 allegations involving excessive force, only 42 (2.0%) were sustained.

We recognize that many specious complaints are made against police officers and that making a complaint can be a tactic designed to divert attention from the complainant's wrongdoing. We nevertheless believe that, in cases involving allegations of excessive force, the system is unfairly skewed against the complainant. Our study indicates that there are significant problems with the initiation, investigation, and classification of complaints. To eliminate these

TABLE 9-1

**DISPOSITION OF ALLEGATIONS OF EXCESSIVE FORCE
OR IMPROPER TACTICS IN COMPLAINTS BY THE PUBLIC**

3,419 TOTAL ALLEGATIONS FROM JANUARY 1986 THROUGH DECEMBER 1990



Source: LAPD Complaint Database.

problems, we recommend that the discipline system be restructured fully and that the operation of that system be open to meaningful public review by a civilian authority. To ensure that review, we recommend establishment of an Office of the Inspector General within the Police Commission, with responsibility to audit and oversee the disciplinary process, participate in the adjudication and punishment of the most serious cases, and report to the Police Commission and its newly created Chief of Staff.

CURRENT COMPLAINT PROCEDURES: INTAKE, INVESTIGATION, AND ADJUDICATION

Complaint Intake

A complaint may be initiated by the Department or by a member of the public. Individuals who initiate complaints against officers may do so at either a police station, the Police Commission headquarters, or through the Department's Internal Affairs Division ("IAD"). Complaints lodged through other locations such as the Mayor's office or a City Council member's office are typically referred to IAD, which then notifies the complainant and initiates the complaint process. As a practical matter, most complainants are unaware of the opportunity or unable to lodge their complaint through any location other than the local police station.

According to LAPD procedures, when a complainant comes to the police station, his or her complaint should promptly be received by a supervisor, who should meet with the complainant and take a statement. Complaints can also be initiated by telephone or letter. When the complainant's allegations, if true, would constitute an act of misconduct, the supervisor must, if necessary, assist the complainant in completing LAPD Form 1.81 (personnel complaint). The failure to take the complaint and record it on a Form 1.81 is a violation of LAPD policy.

Investigation

All complaints must be routed through IAD, where a captain reviews each new Form 1.81. The captain decides whether the complaint will be investigated by IAD or the charged officer's division. Generally, IAD investigates only the most severe cases because of limited resources. In recent years, IAD has investigated only a very small fraction of all excessive force complaints.

If the investigation is retained by IAD, a team of two investigators is assigned to the case, one of whom is principally responsible. (IAD investigators generally rotate through the division on a two-year cycle.) If the investigation is referred to the division, the case is ordinarily handled by a supervisor, usually a sergeant who is likely to have many other duties.

Since the Eulia Love incident in 1979 (discussed in Chapter 10), officer involved shootings have been investigated by a special officer involved shooting team, which is separate from IAD. As part of the special procedure for investigating such cases, the Department notifies the District Attorney's office at the time of the shooting to allow a Deputy District Attorney and a District Attorney Investigator to go immediately ("roll out") to the scene.

Classification, Adjudication, and Punishment

When the investigation is completed either by IAD or by the division, the entire investigation file is delivered to the charged officer's division commanding officer (referred to here as "DCO") -- generally a captain -- for adjudication. The DCO reviews the investigation file and classifies the result into one of the following four categories:

Sustained -- the police officer engaged in the alleged conduct and the conduct was out of policy. Excessive force and improper tactics complaints are rarely sustained unless there are non-involved, independent witnesses who corroborate the complainant's version of the facts.

Not Sustained -- the evidence is insufficient to prove or disprove clearly the allegations made. This classification almost always results when the only witnesses to the alleged misconduct were the accused officer and the complainant or witnesses in some way affiliated with the complainant, such as the complainant's family or friends.

Unfounded -- the act complained of did not occur. This classification results when the investigators find non-involved citizen or police witnesses who contradict the allegations of the complainant.

Exonerated -- the event of alleged conduct occurred, but it was justified, lawful, and proper.

The DCO classification of the complaint determines not only whether punishment may be imposed in that particular case, but also what use can be made of the incident. The officer's past record of "not sustained," "unfounded," and "exonerated" complaints is not considered for any future disciplinary purpose. The officer's past record of "sustained" complaints may not be used in the classification of a personnel complaint, but may be used in determining the penalty if a future complaint is sustained.

The penalties that can be imposed for a sustained complaint include the following:

Warning -- a statement by the DCO instructing the officer to resolve the problem giving rise to the complaint. The LAPD Manual states that this penalty should be used only for very minor censurable acts of misconduct.

Admonishment -- a more severe censure imposed by the DCO.

Official Reprimand -- a letter from the Chief of Police criticizing the officer's conduct. The letter is formally read to the officer, and a copy is placed in the officer's personnel file.

Suspension -- imposition by the Chief of Police of up to six months (approximately 130 working days) off duty without pay.

Removal -- termination of employment, imposed by the Chief of Police.

Whatever the classification and penalty recommendation, the case is then reviewed by the area and bureau commanders (generally a more senior captain and a deputy chief, respectively). These commanders can concur or disagree with the DCO's recommendation. In either case, the views of the commanders are included in the file, which is then forwarded to the IAD Review and Evaluation Section. The charged officer is given an opportunity to review the investigation and the proposed discipline, and to respond in writing.

The file is reviewed by IAD to determine the adequacy of the investigation, but not the classification or recommended penalty. (If the investigation is deemed inadequate, it is returned to the division for more work.) If the complaint is sustained and the recommended penalty does not include suspension or removal, the appropriate commanding officer imposes the

penalty and a record of the penalty is included in the officer's personnel file. If the complaint is sustained and the recommended penalty is suspension or removal, the system allows for additional review and administrative proceedings (described below). Pursuant to the City Charter, any action by the Chief to suspend or remove the officer must be initiated within one year of the act giving rise to the complaint. If the complaint is unsustained (that is, if it is not sustained, unfounded, or exonerated), the proceedings are concluded.

If the DCO or area or bureau commanders recommend that an officer should be suspended or removed, the IAD Commanding Officer and an assistant chief submit the case to the Chief of Police for his determination as to what discipline to impose. The Chief may accept, increase, or decrease the recommended punishment.

Pursuant to the City Charter, if the Chief decides that a suspension for 22 working days or less is appropriate, then the officer has the option of (1) accepting the suspension, in which event the case is concluded, or (2) refusing the suspension, in which event the case proceeds to a Board of Rights hearing. If the Chief decides that a suspension for more than 22 working days or removal is appropriate, the case automatically proceeds to a Board of Rights hearing.

A Board of Rights hearing is an adversary proceeding to determine whether the officer is guilty of the misconduct alleged in a complaint. The names of six officers of the rank of captain or above are drawn at random. The accused officer then selects the three Board members from the six names drawn. The Board decides, based on a "preponderance of the evidence," whether an officer is guilty and, if so, recommends a punishment to be imposed by the Chief. At these proceedings, which are generally public, the charged officer is entitled to be represented by counsel, a Department representative of the rank of lieutenant or below, or both. The officer is also entitled to an investigator. Pursuant to the City Charter, the Chief has discretion to accept or reduce, but not to increase, the penalty recommended by the Board.

When the process is completed, the Police Commission is notified of the results in the IAD Weekly Summary of Adjudicated Cases, which consists of a one or two paragraph summary of each case.

Under state law, any officer subjected to discipline may seek judicial review of the Department's decision.

PROBLEMS WITH THE CURRENT SYSTEM

Many witnesses, during both the Commission's public and executive sessions, identified substantial problems at every stage of the discipline process. In addition, the Commission's independent review of over 700 personnel complaint files involving charges of excessive use of force or improper tactics revealed significant problems in the investigation and classification of complaints.

Complaint Intake

Many witnesses at the Commission's public hearings testified that individuals who wish to file complaints face significant hurdles. Some commented on the complainant's fear of presenting his or her complaint at the local police station. Others complained of practices that made filing a complaint unnecessarily difficult or impossible.

For example, Latino LAPD officers stated that even in many heavily Latino divisions, there is often no Spanish-speaking officer available to take complaints. Witnesses testified at the Commission's public hearings that intake officers actively discouraged them from filing complaints by tactics such as requiring the complainant to wait for long periods before being permitted to make a complaint, and even threatening defamation suits or referrals to the Immigration and Naturalization Service. Several former Police Commissioners told us they felt the police station was not a good place to start the complaint process.

LAPD Deputy Chief Glen Levant confirmed that some officers actively discourage people from filing complaints. Chief Levant stated that he asked volunteers to try to lodge complaints in certain divisions and report their experiences. The volunteers reported that division personnel actively discouraged people from lodging their complaints. Chief Levant, who has initiated action to stop that practice, believes that the problem is Department-wide.

In an attempt to verify these practices independently, Commission staff contacted by telephone a sample of former complainants (approximately half

whose complaints were sustained and half whose complaints were unsustained). Even among those whose complaints were sustained, we found several said they had been "discouraged" or "intimidated" from making a complaint. Approximately one-third of this group described procedures that were not hospitable to their efforts. An even higher number of those whose complaints were not sustained complained of harassment and intimidation. Of course, the survey could not include those persons who were sufficiently intimidated by the process so as not to make a complaint.

The LAPD has recognized that, at least in the past year, complaints of officer misconduct made by the public were often noted in daily activity logs rather than recorded in the official Personnel Complaint Form 1.81 that triggers a formal complaint investigation and IAD review. According to a 1982 LAPD audit of sergeant and watch commander logs in four divisions:

[I]nformal systems do in fact exist for documenting and adjudicating personnel complaints. Supervisors record preliminary investigations of reportable acts of misconduct in their daily logs to allow the watch commanders, and more often the division or Area Commanding Officers, to make determinations as to whether or not 1.81's should be initiated.

In response to the audit, the Department acknowledged that this practice was "unacceptable."

A 1983 audit confirmed systematic failures to fill out the Form 1.81 in another division. That audit noted that the informal system sometimes took the form of recording the complaint on a yellow tablet ("yellow sheeting") rather than initiating an official personnel complaint. Several years after the 1982 and 1983 audits, this "yellow sheeting" practice was utilized in an incident involving one of the four officers indicted in the Rodney King case. According to the complaining witness, who was interviewed by the Commission staff, the sergeant's "yellow sheet" was transformed into a formal complaint only after the complainant returned to the police station a second time and demanded (over the sergeant's objection) that his complaint be officially recorded. (The complaint was held not sustained.) No audits for recent years indicating whether or not these informal practices have been discontinued were provided to the Commission by the LAPD.

Investigation

Form 1.81 Complaint Investigations

The Commission staff reviewed over 700 personnel complaint investigation files relating to charges of excessive force or improper tactics. These included over 300 randomly selected files involving unsustained complaints for the period from 1987 through 1990, over 200 files involving sustained complaints for excessive force or improper tactics for the period from 1984 through 1990, and all personnel complaint investigation files for the 44 officers with six or more allegations of excessive force or improper tactics during the period from 1986 through 1990. That review validates many of the public's charges of inadequate or improper complaint investigation.

A typical complaint investigation should focus on identifying and interviewing individuals who were or may have been witnesses to alleged misconduct. To ensure fairness, the process requires both the prompt identification of those who participated in or might otherwise have witnessed the event, and the prompt interview of all such individuals. In the division investigation files examined, however, the Commission found lapses with respect to both of these basic procedures.

Concerning the identification of witnesses, files reflected that independent witnesses were either not identified or, if identified, were not interviewed. In a number of files, there was no indication that the investigators even attempted to identify or locate independent witnesses. Investigators were also hampered by the failure of officers on the scene to fill out or retain field interview cards.

The Commission's examination was necessarily based almost exclusively on information that appeared on the face of the files; we did not re-investigate the charges. However, LAPD Deputy Chief Bernard Parks reported to Commission staff that he had found inadequate and misleading information in the complaint investigation files in the bureau under his command. For example, in an audit of one file, Chief Parks found that an LAPD sergeant, in charge of an investigation into allegations that a handcuffed suspect was beaten on the head and face, had apparently fabricated an interview with a California Highway Patrol officer who had been at the scene of the complainant's arrest. The file contained a report that the CHP officer saw nothing and was generally uncooperative with the investigator. When the

division captain, at Chief Parks' direction, contacted the CHP, he learned that the CHP officer had never been contacted by anyone at the LAPD concerning the incident under investigation.

The Commission has reviewed all available IAD investigation files relating to excessive force or improper tactics allegations from 1986 through 1990. The percentage of sustained excessive force or improper tactics complaints investigated by IAD is substantially higher (15%) than the percentage for division investigations (5%). Because of IAD's initial screening and the relatively small number of files available from IAD, it is difficult to draw firm conclusions from those statistics. The IAD files reviewed revealed that these investigations, on the whole, were of a higher quality than the division investigations. Moreover, due to its reputation as an elite unit and its place in the Department structure, IAD has greater potential than does the charged officer's own division for independence and expertise in conducting complaint investigations. However, this potential can only be realized if there is a commitment to effective discipline in excessive force cases from the LAPD leadership, as well as a commitment of additional resources and training for IAD investigative personnel.

Officer Involved Shootings

Every officer involved shooting is investigated by the LAPD whether or not there is any allegation of misconduct. These investigations are included here because they involve use of force and, if the shooting is out of policy, can result in discipline. Although the LAPD, as stated above, has a special "officer involved shooting team," we also found serious flaws in the investigation of shooting cases. Specifically, we found that:

- Officers at the scene are frequently gathered together and interviewed as a group, which many have appropriately criticized as an opportunity for witnesses to "get their stories straight."
- Officer statements are often not recorded until the completion of a "pre-interview," which is attended only by LAPD officers. Only when the "pre-interview" is concluded is a recorded statement taken.
- When the LAPD does interview the involved officer, the officer's statement is usually "compelled" under

the statutory Police Officer's Bill of Rights. Legally, no "compelled" statement can be used in any criminal prosecution of that officer. Similarly, any information or discoveries obtained directly or indirectly from that statement cannot be used against the compelled officer in a criminal proceeding. When these compelled statements are taken at the beginning of the administrative investigation, any potential criminal prosecution will likely be very difficult to pursue.

- The District Attorney's representatives are not permitted to interview the police officer or witnesses until after the LAPD has completed its investigation.

Other law enforcement agencies have successfully conducted shooting and other investigations without resorting to these techniques. The Commission perceives no legitimate reason why the LAPD continues to engage in these practices.

Classification and Adjudication

Initial Classification

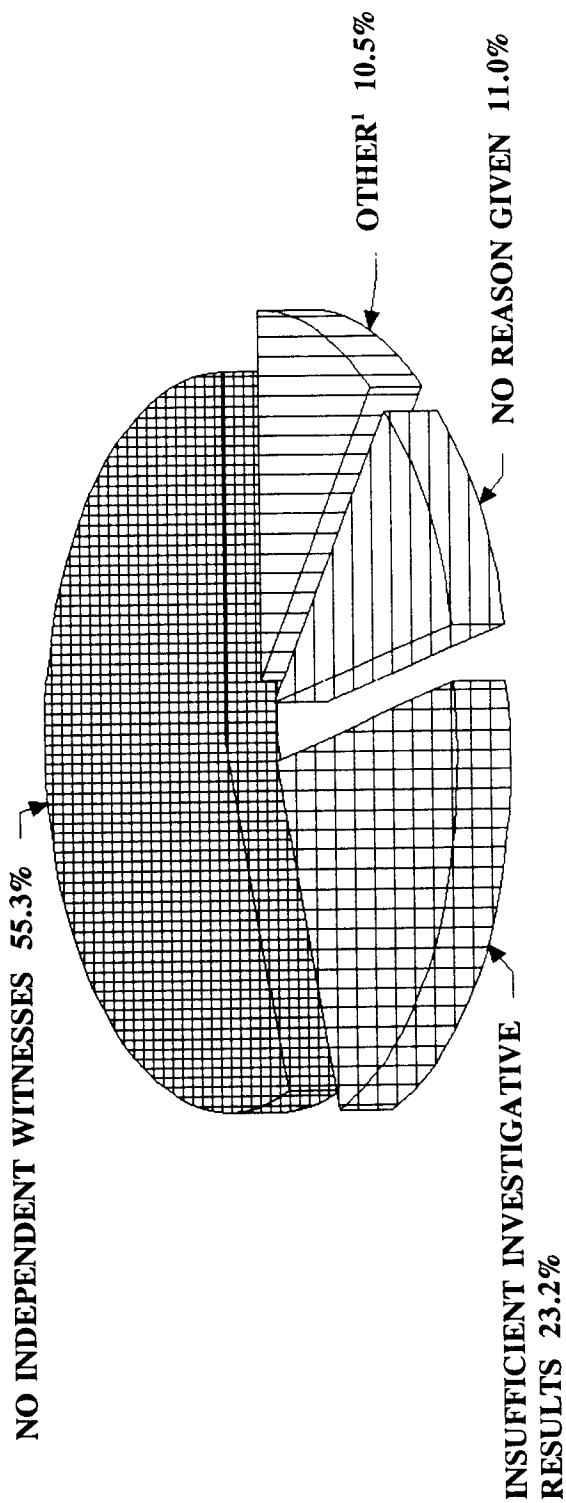
Based on testimony before the Commission and the staff's review of investigative files, the Commission has concluded that the Department's system of classification as it is now designed and operated is biased in favor of officers charged with excessive force or improper tactics.

First, there is no consistent basis for categorizing witnesses as "independent" or "non-involved" as opposed to "involved." Yet the presence of a non-involved witness can determine whether a complaint is not sustained or sustained. Similarly, the existence of a witness is often the determining factor as to whether an unsustained complaint is classified as unfounded or not sustained. Table 9-2 indicates that over 50% of excessive use of force and improper tactics allegations listed in the LAPD's weekly summary of adjudicated cases that were unsustained, were classified as such due to the lack of an "independent" witness.

Instances of this categorization problem abound. For example, in one case a non-involved witness observed the use of force against another individual and reported this event to the LAPD. When the case was finally adjudicated, the complaint was classified not sustained because the witness,

TABLE 9-2

**REASONS STATED BY LAPD FOR NOT SUSTAINING
COMPLAINTS OF EXCESSIVE FORCE OR IMPROPER TACTICS
JANUARY 1986 THROUGH DECEMBER 1987 AND OCTOBER 1988 THROUGH JUNE 1990**



¹ Other includes - Conflicting Testimony (4.4%), Insufficient Evidence (2.9%), Independent Witnesses (2.4%), Inconsistent Injuries (0.7%), and Lack of Credibility (0.1%).

Source: LAPD Weekly Summaries of Adjudicated Complaints.

by virtue merely of having reported the incident, was deemed to be "interested" or "involved." On the other hand, police officers at the scene were often treated as independent witnesses for the purpose of classifying the complaint as unfounded. In one case, a high ranking LAPD commanding officer reduced a classification of not sustained to unfounded on this ground.

Second, some commanding officers evaluated witnesses' credibility in an inconsistent and biased way. In one case, a school district police officer corroborated a complainant's claim of excessive force, but an arrestee sitting in a patrol car claimed to have seen nothing. Apparently because the arrestee corroborated the accused officer's version, that testimony was deemed to counter-balance the statement of the other law enforcement officer, and the complaint was classified not sustained.

Similarly, in many cases the reviewing officer found the complainant to be not credible because of insubstantial inconsistencies between the complainant's statement and the statement of a witness. In one case, for example, a narcotics suspect complained of being "thrown" against a barroom wall. Because the bartender said that the complainant was "pushed" into the wall, he was deemed to have contradicted the complainant. The report failed to state, however, that both the complainant and the bartender contradicted the officers, who stated that the suspect lost his balance and fell into the wall when he attempted to destroy or discard evidence.

Third, the Commission's review indicated that in several cases commanding officers discredited or diminished a complainant's charges by finding that the physical injury suffered by the complainant was not consistent with the force allegedly used, when there was no basis for such a finding. The Commission reviewed several cases in which the complainant had suffered obvious, documented injuries, but the commanding officer concluded that the injuries could not have been caused by the officer. In reaching these conclusions, the commanding officers often failed to offer any credible explanation of how the injuries might otherwise have occurred.

Fourth, commanding officers sometimes ignored obvious physical evidence in concluding that the alleged injury did not occur. In the file audited by Deputy Chief Parks discussed above, for example, the complainant alleged that he had been beaten while sitting handcuffed in a police car. The file contained a photograph of the handcuffed complainant sitting in a police car at

the scene of his arrest. In that photograph, his face shows a minor cut on the lip. However, his booking photograph, taken a short time later, shows severe injuries to his head and face as if he had been beaten. The file also revealed that one of his teeth had been found in the back seat of the police car. The commanding officer who classified the complaint as not sustained took no note of this compelling physical evidence.

Fifth, the Commission encountered a significant number of not sustained cases in which, notwithstanding the "official" result, the commanding officer's "Administrative Insight" criticized the officer's performance. In many instances, this criticism implied unmistakably that the commanding officer believed the charged officer was guilty of misconduct or improper behavior. Worse, as discussed in greater detail in Chapter 3, such negative "insights" did not appear with any frequency in the performance evaluations of at least the 44 officers who had amassed the greatest number of not sustained and unfounded complaints during the relevant period.

Review by the Chief of Police

In several cases, the Chief reversed the field commander's classification of a complaint as sustained without any explanation or rationale for his decision. This problem was the subject of an internal disciplinary audit conducted in 1986. The audit report identified nine instances in less than a year within the South Bureau in which the Chief of Police either ordered that a complaint not be sustained, ignored the recommendation of the reviewing officers that punishment be imposed, or substantially reduced the recommended punishment. The author of the report noted that in each instance, "it was clear to me that the officers had conducted themselves in a manner inconsistent with established Department standards." Noting that the Chief had disregarded the recommendations of the bureau commander, the author wrote:

In addition to the inherent undermining of Bureau judgment and credibility, the unfortunate by-product of these reversals was that the involved officers were led to believe that their conduct in these matters was acceptable though the Bureau deemed it inappropriate.

In a broader vein, Assistant Chief Dotson expressed concern over the manner in which the Chief of Police mitigates discipline. He stated:

But in a lot of cases, not only discipline, an officer will appeal to the Chief, and the Chief will mitigate whatever the situation may have been, whether it be discipline, administrative transfer, an appointment, or an upgrade, or whatever, based on the officer's appeal. And he frequently does that without informing the chain of command that had been involved in the contra-recommendation in that process, and so, that happens in discipline from time to time.

The Commission concludes that the Chief should be required to state in writing to the Police Commission any decision to alter the adjudication of a personnel complaint or the recommended penalty, and the reasons for that decision.

Punishment

The preceding sections demonstrate that the LAPD sustains relatively few excessive force complaints against its officers. The Commission is further persuaded that, even when such complaints are sustained, the punishment is more lenient than it should be. We base this conclusion primarily on testimony and information provided by the Department itself.

Commander Michael Bostic, who was assigned by Chief Gates to investigate issues relating to training and use of force following the King incident, testified before the Commission as follows:

BOSTIC: I've interviewed several hundred people in the organizations from lieutenants and captains and all of the commanders and deputy chiefs and kind of reoccurring theme that I've heard that's really bothered me . . . they say that the organization is light on excessive force . . .

. . . .

Q: Excuse me, Commander. Do you mean light in punishment?

BOSTIC: Light in punishment, light in punishment. And, I then said to them, well, what do you mean, and almost universally they gave me these examples. They said if you lie, cheat and steal we'll fire you, if you use drugs we'll

fire you. But if you use excessive force, we won't.

Commander Bostic went on to say that he disagreed with this assessment because he considered it an "apples to oranges" comparison. He testified that, while there is no degree of lying or drug use -- either you are guilty or you are not -- "[w]hen it comes to excessive force, that is extremely a case by case perception issue."

The Commission also spoke with a deputy chief who supported the "light in punishment" viewpoint. He stated that the discipline imposed by the Department is more severe for conduct that embarrasses the Department than for conduct that reflects improper treatment of members of the public. By way of example, he said that an officer caught in a liaison with a prostitute is likely to receive more severe discipline than an officer who beats an individual. A former high ranking officer with broad experience within the Department also corroborated this view, telling us that excessive force is treated leniently because it does not violate the Department's internal moral code. This former officer stated that the Department vigilantly enforces discipline for violations such as theft and bribery, which indicate police corruption. But violent behavior, such as the use of batons, is viewed by many members of the Department as not requiring discipline at all because, as this officer said, "some thumping" is permissible as a matter of course.

More support for this view was provided in interviews with members of the Police Protective League and many patrol officers. According to those sources, officers receive more severe punishment for breaking what they described as "administrative" rules than for breaking rules regarding excessive force. Many officers went on to say that they believe punishment is arbitrarily imposed and depends on the subject officer's place in the Department's formal and informal hierarchy.

This widespread view within the Department supports the inferences that can be drawn from the statistical data concerning penalties imposed in excessive force cases: the Department treats excessive force violations more leniently than it treats other types of violations.

The Commission realizes, of course, that there are gradations to excessive force. However, even taking these gradations into account, the Department's own statistics are disconcerting.

For example, the Commission reviewed the discipline imposed on officers with sustained complaints for excessive force against handcuffed suspects between 1984 and 1990. This particular misuse of force was selected because numerous witnesses (including senior ranking members of the Department) testified that unnecessarily striking a handcuffed person was absolutely unacceptable behavior which would not be tolerated by the Department. In fact, most officers agreed that, except in the most unusual cases, no force is necessary once a person is handcuffed.

From the beginning of 1984 through the end of 1990, the Department's own records reflect at least 36 cases of sustained complaints involving allegations of excessive force against a handcuffed suspect. Of these cases, only two (both involving officers with egregious records of force-related complaints including prior suspensions) led to removal. In every other case, the discipline was a 22-day suspension or less. The median number of days suspended was less than 10 days and only three officers received 22 days. Even more significant, in about half of these cases the matter was referred to a Board of Rights because of the division's commanding officer's belief that the discipline should be termination or a suspension of more than 22 days. With the exception of the officers noted above, the Boards did not recommend removal or a suspension of over 22 days even for outrageous behavior. In one incident, for example, an officer, while sitting on his motorcycle, balanced himself by placing his boot on the face of a handcuffed suspect lying on the ground. A complaint was sustained and referred to a Board of Rights. For this act, the officer received only a 15-day suspension.

Our review also revealed lax punishment for officers who blatantly lied about the event in question. Notwithstanding that those officers demonstrated willful untruthfulness, they were not removed. For example, the Board found that an officer hit a handcuffed suspect in the mouth with his fist while the suspect was quietly sitting in a chair. The officer contended that, in turning around, he accidentally swung his arm and his hand happened to come in contact with the suspect. The Board found this story unbelievable. Notwithstanding the officer's false statement, he received only a 22-day suspension.

The Commission also examined generally the punishments imposed for sustained complaints of excessive force or improper tactics. The results are

shown in Table 9-3. Of the 171 sustained complaints between 1986 and 1990 reviewed by the Commission, only 13 resulted in removal (one was a probationary officer), and only seven in a suspension of over 22 days.

The system is even less strict in cases of improper officer involved shootings. According to the Police Foundation's *The Big Six* survey of the six largest cities in the United States, Los Angeles in 1986 ranked first in civilians wounded and killed by police, with 11.1 civilians wounded or killed per 1,000 officers. Other cities ranged from a low of 1.2 civilians wounded or killed per 1,000 officers (Philadelphia) to a distant second of 7.6 per 1,000 officers (Houston). The Commission's staff reviewed the discipline imposed in a sample of 39 cases involving out of policy shootings, including at least four cases where suspects were fatally shot and 10 where suspects were injured. The most severe discipline imposed was a 10-day suspension, and 19 cases resulted in no suspension at all. A similar study of 35 improper shooting cases conducted in May 1991 by the *Daily News* also concluded that discipline in these cases was lax.

Unfortunately, there is currently no effective oversight of the disciplinary process or of the punishments imposed. The Police Commission is charged by the City Charter with overseeing the LAPD, including the disciplinary system. But as it is presently structured, the Police Commission simply cannot, and does not, effectively review the adequacy of the disciplinary system. First, the Police Commission meets too infrequently, and has too many responsibilities, to review these summaries in detail. Second, because the Police Commission is not given the actual complaint files, it does not have the information necessary to determine whether the results are appropriate.

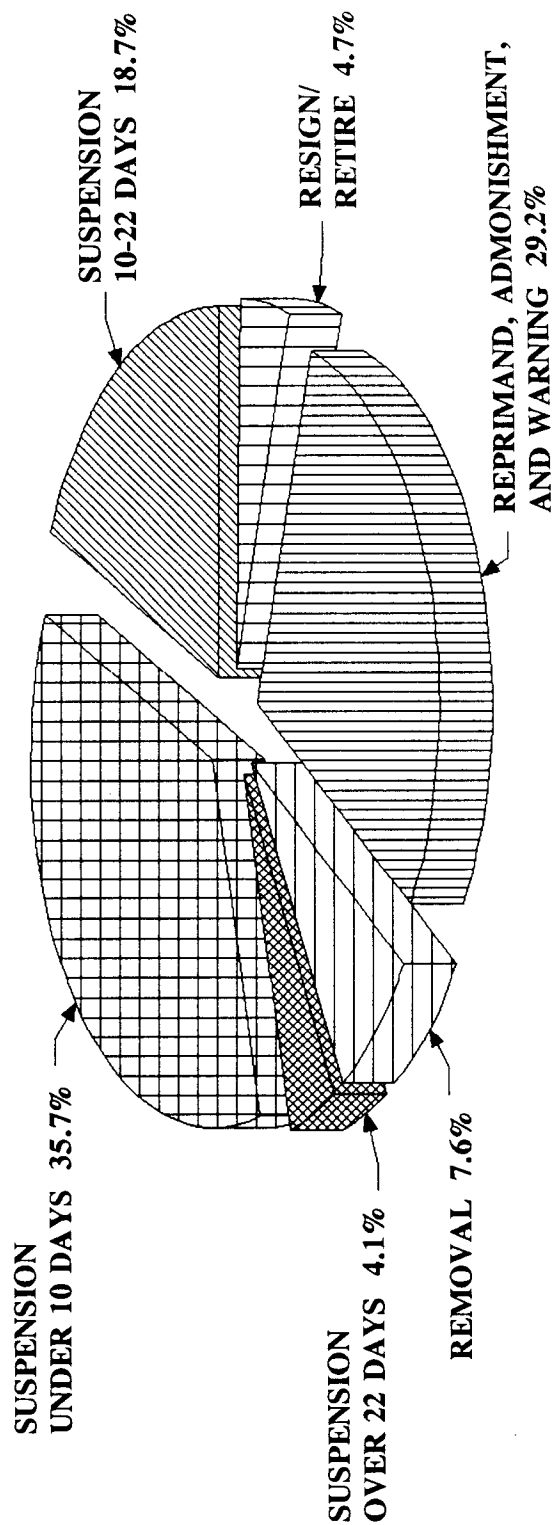
THE CODE OF SILENCE

Perhaps the greatest single barrier to the effective investigation and adjudication of complaints is the officers' unwritten "code of silence." While loyalty and support are salutary and even necessary qualities, they cannot justify the violation of an officer's public responsibility to ensure compliance with the law, including LAPD regulations. The code of silence influences the behavior of many LAPD officers in a variety of ways, but it consists of one simple rule: an officer does not provide adverse information against a fellow officer.

TABLE 9-3

**PENALTIES IMPOSED FOR SUSTAINED COMPLAINTS BY THE
PUBLIC OF EXCESSIVE FORCE OR IMPROPER TACTICS**

171 TOTAL SUSTAINED COMPLAINTS FROM JANUARY 1986 THROUGH DECEMBER 1990



Source: LAPD Complaint Database.

For example, in a recent case, one young LAPD officer initially covered up for a partner accused of an unprovoked attack on two homeless African-American people. He later reached an agreement with the prosecutor to testify against his partner. When asked to explain why he had lied to investigators in his initial interview, he testified:

Basically being raised by a Los Angeles police officer myself, coming from a rather elite unit within the armed service, it is basically a non-written rule that you do not roll over, tell on your partner, your companion.

After the officer recanted his prior statement, the investigator noted that this officer had gone "against the unwritten code of silence which states that 'you never cop out.'"

One former LAPD sergeant told the Commission that there were at least one or two officers in every division in which he had worked who regularly used excessive force, and that every sergeant in the city would say the same thing if he or she were being candid. However, he said that younger officers in the field who are in a position to observe this conduct are afraid to "blow the whistle" on fellow officers.

When asked whether there is a code of silence among officers, former Assistant Chief Jesse Brewer stated,

That may be the right way to term it in that there is a reluctance on the part of police officers to complain about misconduct on the part of their partners when they see it, when they observe it.

And when the misconduct is reported by someone else, Chief Brewer observed:

They try to save themselves by saying, "I don't know," or "It didn't happen," because if it comes out that they knew it happened and did nothing about it, then they would be subject to a personnel complaint for failing to take appropriate action.

Chief Brewer wrote a similar comment in his review as a deputy chief in the early 1980's of a complaint investigation:

It is discouraging to note that throughout this investigation, . . . regular sworn officers [immerse] themselves in half truths or blatant untruths.

One of the most distressing examples of the code of silence in operation occurred in the recent prosecution of three LAPD officers for criminal vandalism stemming from the extensive property damage in the 39th and Dalton drug raid discussed in Chapter 3. Sixteen police officers were called by the prosecution to testify against their fellow officers. The judge who presided over the trial stated on the record (outside the presence of the jury) his concern that the officers might be "trying to help the defendants . . . because they are brother officers." More dramatically, he later stated that "many of the [police officer witnesses] are clearly lying," and that their conduct in doing so was "shameful" and an "embarrassment." After, he flatly stated, "I cannot think of a case in my life . . . where I have seen more false testimony." The defendants did not testify and were found not guilty.

Officers who do give evidence against their fellow officers are often ostracized and harassed, and in some instances themselves become the target of complaints. One officer who corroborated a suspect's report of being beaten in a holding cell was forced out of the Department. Another officer who attempted to lodge a complaint against a fellow officer for excessive force was told that if she wanted to press the complaint she had two choices: stay on the force and be labeled as an oddball, or resign. She resigned. A successful Latino officer who had risen through the ranks complained of the use of racial epithets and ethnic slurs; he became the target of an investigation and was transferred out of the elite unit where he was assigned. An African-American female officer who complained of highly provocative sexist and racist remarks made by a white male officer was disciplined for using profanity in reacting to the provocation. As a former LAPD officer stated in a *Los Angeles Times* column on July 2, 1991:

When an officer finally gets fed up and comes forward to speak the truth, that will mark the end of his or her police career. The police profession will not tolerate it, and civilian authorities will close their eyes when the retaliatory machinery comes down on the officer.

Police officers are given special powers, unique in our society, to use force, even deadly force, in the furtherance of their duties. Along with that power, however, must come the responsibility of loyalty first to the public the officers

serve. That requires that the code of silence not be used as a shield to hide misconduct.

**THE NEED FOR REFORM:
THE COMMISSION'S RECOMMENDATIONS FOR CHANGE**

From the foregoing evidence, the Commission concludes that the current system of discipline does not work. There are failures in every stage of the disciplinary system from complaint intake to punishment. Minor tinkering or adjustment will not solve these problems; a major system overhaul is required.

We conclude that the best approach is to place oversight of the disciplinary process in the Police Commission, with that Commission being given adequate staffing to permit it to accomplish its mission effectively. This oversight responsibility would be centered in a new civilian staff position, the Office of the Inspector General, which will report directly to the Police Commission and its Chief of Staff, also a newly created position. The Police Commission, knowledgeable about and responsible for police policy, and with the substantially augmented staff we recommend in Chapter 10, will be in the best position to implement and oversee an effective disciplinary process.

The Police Commission should be accountable for making the process easy to use, for assuring that the Department investigates and adjudicates allegations thoroughly and fairly, and for identifying trends or indicators that raise policy issues.

With respect to discipline, we believe good management principles counsel leaving the Chief primarily responsible for imposing discipline in individual cases. The Commission should, however, set guidelines as a matter of policy, and hold the Chief accountable for following them.

We think a civilian oversight process is preferable to a so-called "civilian review board." The Commission has surveyed the 20 largest cities in the United States (other than Los Angeles) and Madison, Wisconsin, to ascertain how they handle complaints against the police. Thirteen cities review complaints using some entity that consists of or includes civilians. Six have wholly civilian review boards; four have boards composed of both civilians and sworn officers; and three have parallel review processes -- one civilian, one internal -- operating concurrently. Only four of these 13 cities use investigators

unaffiliated with the city's police department; thus, 17 out of the total 21 surveyed use police department investigators.

A number of witnesses before the Commission called for the establishment of a civilian review board, entirely external to the Police Department, authorized to review particular cases of alleged misconduct. However, the literature regarding civilian review boards, expert testimony before the Commission, and our survey of other cities persuade us that this proposal is not the best alternative. First, such a system would greatly increase the risk of an "us against them" attitude on the part of police officers, which could in turn aggravate the code of silence problem and result in a lack of respect and cooperation on the part of officers toward the complaint review process. Second, the review board itself could become politicized, resulting in manipulation of the complaint review process that would harm both the complainants and the Department. Third, it could be difficult to recruit a balanced, professional staff for such a single-purpose agency.

These deficiencies have led at least some experts to conclude that "a [complaint review] system has rarely, if ever, been successful if the opportunity to respond to complaints was completely removed from the police force." The Police Commission, in its July 2, 1991 report, also recommended against an elected civilian review board. Instead it proposed increased civilian oversight of the complaint process by means of more extensive involvement of the Police Commission itself.

In short, we are not persuaded that it would be effective to create yet another body, thereby diffusing responsibility and creating a new bureaucracy, to do what a properly staffed and empowered Police Commission ought already to do as part of its Charter mandate. In our judgment, the tension between the need for public accountability and the apparent failure of civilian review boards to perform effectively is best resolved by using the already existing Police Commission actively to oversee and audit the disciplinary system, but to allow professional Department investigators and supervisors to be responsible and accountable for individual cases. To this end, we make the following recommendations.

Recommendation 1: Complaint Intake

The Police Commission should create an Office of the Inspector General within the Police Commission, reporting directly to the Commission and its Chief of Staff, to audit and oversee the complaint and disciplinary process. The Inspector General's office should be adequately staffed to perform the functions set forth in these recommendations, consistent with our related recommendations in Chapter 10.

Responsibility for the receipt of complaints should rest with the Police Commission. The Police Commission should publicize the ways to obtain complaint forms and to complete and file them. These forms, which should be straightforward enough to be filled out by a complainant, should be printed in English, Spanish, and other appropriate languages. Complaints should be received at places in addition to the police station. For example, City Council district offices might be acceptable locations. Posters in English, Spanish, and other appropriate languages should be placed conspicuously in police stations informing people how and where to file complaints, and where to go for help in doing so. The Police Commission's Inspector General should have trained personnel available through a telephone "hot-line" (the number of which should be included on the station-house posters) ready to help people complete and file complaints. The Inspector General's office should maintain a file of each complaint. Once a complaint is properly completed and filed, it should be routed to IAD for transfer onto a Form 1.81 and further processing. If an individual fills out a Form 1.81 initially, a copy should be routed to the Inspector General's office.

The statute of limitations set forth in City Charter Section 202 (currently one year) should be extended and modified. The Commission has heard substantial testimony that this limitation unduly hampers the Department, especially in cases where the misconduct is not discovered quickly, where outside forces delay the adjudicatory process, or where the charges do not relate to a single "incident" but rather to a pattern of conduct (such as poor supervision).

The City Attorney's office should promptly notify the Police Commission and the Department when civil claims are filed against the City arising out of alleged police misconduct. The Department, through IAD, should investigate every significant claim.

The Department should actively enforce the already existing requirement that business cards be handed out following police contact with the public.

Recommendation 2: Investigation

All complaints relating to excessive force (including improper tactics) should be investigated by IAD rather than the division, and should be subject to periodic audits by the Police Commission through its Inspector General. IAD should be given sufficient staff to handle the substantial extra burden that this shift will entail. Longer assignments to IAD should be established to allow investigators to develop the detachment necessary for full and fair investigations. IAD investigators should generally be detectives. This modification will allow police station and division supervisory personnel to concentrate on officer supervision, rather than officer investigation. Moreover, IAD's structural removal from the division will result in a more neutral and thorough investigation.

To further IAD's structural independence, the head of IAD should be a deputy chief, and should report directly to the Chief of Police. This person should work closely with the Police Commission and its Inspector General.

To ensure that the investigation is adequate and fair, IAD should route the completed investigation file not only to the adjudicatory authority (discussed below), but also to the Inspector General. The Inspector General's office will therefore be able to satisfy itself, at this critical stage, that the investigation is thorough and complete.

The improper investigative practices identified in this Chapter should immediately be discontinued. Specifically, there should be no group interviews of officers -- whether in officer involved shooting investigations or other misconduct investigations -- and no "pre-interviews" of officers before taking their statements. As is currently done by IAD, all interviews should be tape recorded in excessive force related cases (including improper tactics) as well as in cases involving shootings. Further, in an investigation where the officer's conduct is potentially criminal, special precautions should be taken to protect against compromising evidence against the officer. In excessive force cases, IAD should investigate the role of all bystander officers (that is, officers present at the scene but not participating in or directing the use of force) to determine whether and to what degree they are in violation of Department policy.

Recommendation 3: Classification and Adjudication

The initial classification of complaints should be made by the bureau commanding officer (a Deputy Chief or commander), not the charged officer's division commanding officer. Although the bureau commanding officer may discuss the matter with the relevant DCO, the bureau commanding officer must retain personal responsibility for making the classification decision. The Commission agrees that it is imperative, if management is to be held accountable, that management be empowered to make the initial classification. However, our review of the current process has persuaded us that this task cannot be fairly accomplished at the division level. This decision must be placed at the bureau level, allowing the person making the initial classification to benefit from a wider view of the Department. This modification also minimizes the personal bias that was apparent in many of the files the Commission staff reviewed.

Classification system terminology should be modified to reflect more accurately the nature of the actual determination made. The "not sustained" classification should be renamed "not resolved." A "not resolved" finding, while not sufficient to impose discipline in that particular case, should be available for review in future investigations, as well as available for consideration at the time an employee evaluation is completed and for purposes of promotions and upgrades. Any finding, including unfounded or exonerated, should also be available for non-punitive purposes such as training, counseling, and assignment.

The automatic preference for officers' testimony (sometimes called the "tie goes to the officer" approach) should not be relied on as a decision-making technique. All available evidence, including statements from witnesses -- whether they are deemed independent or involved -- should be fairly and dispassionately evaluated in making a classification based on a "preponderance of the evidence" standard.

After the initial adjudication is complete, the file should be sent back to IAD for its review not only of the investigation, but also of the classification. This "second look" outside the chain of command will provide an appropriate check on the initial determination. A copy of the completed complaint file should simultaneously be routed to the Inspector General's office.

The bureau chief should provide his or her subordinate command officers monthly with a list of officers who have been the subject of personnel complaints and the results of the adjudication of those complaints. In evaluating those subordinate command officers, the bureau chief should take into account and give significant weight to the complaint histories of the officers under that subordinate's command. Careful scrutiny should be given to the management and leadership qualities of command officers whose subordinates have high levels of personnel complaints lodged against them. Likewise, the bureau chiefs should be evaluated on their effectiveness in dealing with subordinate commanders whose divisions are a source of high levels of personnel complaints.

If a complaint is sustained and there is a recommendation for suspension or removal, the Chief of Police should be required to provide a written explanation containing the facts and reasons for any modification in the classification or the penalty. The Chief's written explanation should be submitted to the Inspector General.

In making classification determinations and adjudications, bureau chiefs and Boards of Rights should be permitted to consider evidence adduced in prior complaints that were classified sustained or not resolved, and the City Charter should be amended to so provide. These fact finders should have access to all of the evidence developed in the resolution of any prior relevant complaints, and should be permitted to give whatever weight to that evidence they deem appropriate.

If the fact finder is a Board of Rights, the Board may, in its discretion, consider evidence of such complaints, including the testimony of the prior complainant.

The City Charter should be amended to provide that, if a Board of Rights is convened, one of the three members should be a civilian representative from the Inspector General's office. This civilian representative will bring a detached perspective to the case and force a rigorous sifting and evaluation of the evidence. The other two Board members should be randomly selected from among qualified officers, without further selection by the charged officer as is now allowed.

Recommendation 4: Punishment

Because the Chief of Police is the sworn officer ultimately accountable for the Department, the Independent Commission believes that he or she must be able to mitigate discipline in appropriate cases, and also that significant disciplinary actions should be imposed by the Chief and not by subordinate officers. However, in instances where a Board of Rights has been convened, the Chief's power of mitigation should be subject to civilian review. The City Charter should be amended to give the Police Commission the power to reverse the Chief's decision to reduce a recommended penalty by the Board.

The Department should require training and counseling following every sustained complaint relating to excessive force (unless the officer is removed) and, where appropriate, following complaints that are unfounded or resolved. It is not enough to punish those who use excessive force, and hope that it does not happen again. The Department must take affirmative steps to ensure that the officer will modify his or her behavior.

With regard to supervisory personnel (including field training officers), the Department should have the authority to impose the punishment of demotion in rank, an option not presently available under the City Charter. When an officer is charged with improperly carrying out his or her supervisory responsibility, especially given the enhanced accountability the Commission recommends, suspension or removal may not be the best response. It may be more appropriate to relieve the officer of some or all of his or her managerial responsibility, that is, a demotion in rank. Such demotion should be imposed only after the Board of Rights procedure as with a suspension for more than 22 days or a removal.

The Department must make enforcement of its policy against the code of silence a high priority in discipline, training, and other areas. In doing so, it should actively and severely discipline those who violate Department policy by failing truthfully to report known instances of misconduct. Careful scrutiny should be given to cases where an officer corroborates the story of another officer during the investigation of a complaint, and where that complaint is sustained. Further, safeguards must be established to protect officers who break the code of silence from harassment or punishment by other officers or the Department itself.

Recommendation 5: Public Accountability

The Inspector General should audit the disciplinary system at least annually, and forward that detailed audit to the Police Commission for its review and approval. The results of this audit should be incorporated into the Chief of Police's performance review. The Chief of Police should be required to respond to this audit.

The approved annual disciplinary audit, redacted where the Police Commission believes necessary for personnel reasons, should be submitted to the Mayor, the City Council, and the public along with the Chief of Police's response.

In addition to publishing its detailed audit, the Police Commission should set aside a particular public meeting or meetings to review the audit and to take public comments.

NOTES TO CHAPTER NINE

1. Petterson, "Police Accountability and Civilian Oversight of Policing," in A. Goldsmith, ed., *Complaints Against the Police: The Trend to External Review*, p. 280 (Clarendon Press 1991) (forthcoming).